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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

JEFF HATCH-MILLER – Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG

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AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE APPLICATION OF)	DOCKET NO. T-03632A-06-0091
DIECA COMMUNICATIONS DBA COVAD)	T-03406A-06-0091
COMMUNICATIONS COMPANY, ESCHELON)	T-03267A-06-0091
TELECOM OF ARIZONA, INC., MCLEODUSA)	T-03432A-06-0091
TELECOMMUNICATIONS SERVICES, INC.,)	T-04302A-06-0091
MOUNTAIN TELECOMMUNICATIONS, INC.,)	T-01051B-06-0091
XO COMMUNICATIONS SERVICES, INC AND)	
QWEST CORPORATION REQUEST FOR)	
COMMISSION PROCESS TO ADDRESS KEY)	
UNE ISSUES ARISING FROM TRIENNIAL)	
REVIEW REMAND ORDER, INCLUDING)	
APPROVAL OF QWEST WIRE CENTER LISTS.)	

NOTICE OF FILING

DIECA Communications, Inc., doing business as Covad Communications Company, Eschelon Telecom of Arizona, Inc., McLeodUSA Telecommunications Services, Inc., Mountain Telecommunications, Inc., and XO Communications Services, Inc. hereby file the Public Version of the Rebuttal Testimony of Douglas Denney, a copy of which is attached. A Confidential Version of the Rebuttal Testimony of Douglas Denney will be provided to those parties who have docketed Exhibit As and Exhibit Bs to the Protective Order in this docket.

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Arizona Corporation Commission
DOCKETED

OCT -6 2006

DOCKETED BY

nr

ROSKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1 RESPECTFULLY SUBMITTED this 6th day of October 2006.

2 ROSKA DEWULF & PATTEN, PLC

3
4 By 

5 Michael W. Patten
6 One Arizona Center
7 400 East Van Buren Street, Suite 800
8 Phoenix, Arizona 85004

9 Attorneys for Covad Communications Company and
10 Mountain Telecommunications, Inc.

11 Also authorized to sign on behalf of: Eschelon Telecom of
12 Arizona, Inc., McLeodUSA Telecommunications Services,
13 Inc. and XO Communications Services, Inc.

14 Original and 23 copies of the foregoing
15 filed this 6th day of October 2006 with:

16 Docket Control
17 Arizona Corporation Commission
18 1200 West Washington Street
19 Phoenix, Arizona 85007

20 Copy of the foregoing hand-delivered/mailed
21 this 6th day of October 2006 to:

22 Greg Diamond
23 Covad Communications Company
24 Senior Counsel
25 7901 E. Lowry Boulevard
26 Denver, CO 80230

27 Douglas Denney
Eschelon Telecom, Inc.
Senior Director Interconnection/Senior
Attorney
730 Second Avenue S., Suite 900
Minneapolis, MN 55402-2489

William Haas
McLeodUSA Telecommunications Services,
Inc.
Regulatory Contact
6400 C Street SW
P. O. Box 3177
Cedar Rapids, IA 52406-3177

Mike Hazel
Mountain Telecommunications
1430 West Broadway, Suite 206
Tempe, AZ 85282

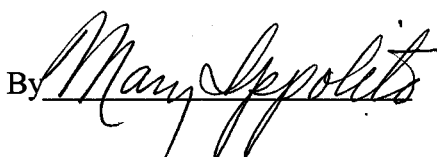
Rex Knowles
XO Communications Services
Regulatory Contact
111 East Broadway, Suite 1000
Salt Lake City, UT 84111

Norman Curtright
Corporate Counsel
Qwest Corporation
4041 North Central Avenue, Suite 1100
Phoenix, Arizona 85012

ROSHKA DeWULF & PATTEN, PLC

ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

- 1 Tom Bade
2 Arizona Dialtone, Inc.
3 7170 West Oakland Street
4 Chandler, Arizona 85226
5
6 Gary Joseph, Vice President
7 National Brands, Inc. dba
8 Sharenet Communications
9 4633 West Polk Street
10 Phoenix, Arizona 85043
11
12 Brad VanLeur, President
13 OrbitCom
14 1701 North Louise Avenue
15 Sioux Falls, SD 57107
16
17 Dwight D. Nodes, Esq.
18 Assistant Chief Administrative Law Judge
19 Hearing Division
20 Arizona Corporation Commission
21 1200 West Washington
22 Phoenix, Arizona 85007
23
24 Maureen A. Scott, Esq
25 Legal Division
26 Arizona Corporation Commission
27 1200 West Washington
Phoenix, Arizona 85007

By 

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN MAYES
BARRY WONG

IN THE MATTER OF THE APPLICATION)	DOCKET NO. T-03632A-06-0091
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COMMISSION PROCESS TO ADDRESS)	
KEY UNE ISSUES ARISING FROM)	
TRIENNIAL REVIEW REMAND ORDER,)	
INCLUDING APPROVAL OF QWEST)	
WIRE CENTER LISTS)	

REBUTTAL TESTIMONY OF

DOUGLAS DENNEY

**ON BEHALF OF ESCHOLON TELECOM, INC., DIECA COMMUNICATIONS
dba COVAD COMMUNICATIONS COMPANY, MOUNTAIN
TELECOMMUNICATIONS, INC. AND XO COMMUNICATIONS SERVICES,
INC.
(THE "JOINT CLECs")**

PUBLIC VERSION

OCTOBER 6, 2006

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1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Douglas Denney. I work at 730 2nd Avenue South, Suite 900, in
4 Minneapolis, Minnesota.

5 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

6 A. I am employed by Eschelon Telecom, Inc., as Senior Manager of Costs and
7 Policy. My responsibilities include negotiating interconnection agreements,
8 monitoring, reviewing and analyzing the wholesale costs Eschelon pays to
9 carriers such as Qwest, and representing Eschelon in regulatory proceedings.

10 **Q. DID YOU FILE TESTIMONY IN THIS CASE ON BEHALF OF THE**
11 **JOINT CLECS ON JULY 28, 2006?**

12 A. Yes.

13 **Q. WHAT IS THE PURPOSE OF THIS TESTIMONY?**

14 A. My testimony responds to the Response Testimony of Armando Fimbres filed on
15 September 22, 2006 ("Fimbres Response"). I also provide updated CLEC
16 analysis of Qwest's wire center list based on the 2004 line count information
17 provided by Qwest as part of its supplemental data response to Joint CLEC Data
18 Request 01-044. In addition, I update table 5 from my direct testimony to correct
19 typos, reflect the recent Utah Commission decision in the wire center proceeding,
20 and reflect commission staff recommendations in other Qwest states.

1 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

2 A. The Joint CLECs are in agreement with many of the recommendations of Staff
3 contained in the Response testimony of Armando Fimbres¹. Specifically the Joint
4 CLECs agree that December 2004 data should be utilized in determining Qwest's
5 switched business line counts and that Qwest should not be allowed to make
6 adjustments to its ARMIS data. However, the Joint CLECs disagree on whether
7 residential lines and non-switched capacity should be included in the CLEC line
8 counts.

9 Table 6 below updates Table 1 from my initial testimony to reflect the Joint
10 CLECs review of the 2004 line count data. This table compares Qwest's
11 proposed wire center designation, with the Joint CLEC's proposed designation
12 based on a proper review of Qwest's line counts, fiber-based collocation
13 background information and the Joint CLEC's investigation of these offices. I
14 also added what I believe would be the Arizona Staff recommendations based on
15 *Fimbres Response*.

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¹ Response Testimony of Armando Fimbres, Docket Nos. T-03632A-06-0091, et. al., September 22, 2006
("Fimbres Response").

Table 6: Summary of Joint CLEC's Investigation of Qwest's Wire Center List

Wire Center	CLLI(8)	Wire Center Designation		
		Qwest	Joint CLECs	Staff
PHOENIX EAST	PHNXAZE	Tier 1	Tier 2	?
PHOENIX MAIN	PHNXAZMA	Tier 1, DS3	Tier 1, DS3	Tier 1, DS3
PHOENIX NORTHEAST	PHNXAZNE	Tier 1	Tier 1	Tier 1
PHOENIX NORTH	PHNXAZNO	Tier 1, DS3	Tier 1, DS3	Tier 1, DS3
THUNDERBIRD	SCDLAZTH	Tier 1	Tier 2	Tier 1
TEMPE	TEMPAZMA	Tier 1, DS3	Tier 1	Tier 1, DS3
MCCLINTOCK	TEMPAZMC	Tier 1	Tier 2	Tier 2
MESA	MESAAZMA	Tier 2	Tier 2	Tier 2
SCOTTSDALE MAIN	SCDLAZMA	Tier 2	Tier 2	Tier 2
TUCSON MAIN	TCSNAZMA	Tier 2	Tier 2	Tier 2

The Joint CLECs further agree with Staff's recommendations for updates to the wire center list, though the Joint CLECs propose a longer transition period, as outlined in the TRRO, and propose that Qwest provide updates to CLECs as wire centers reach one fiber-based collocation or 5,000 switched business lines of "non-impairment."

The Joint CLECs agree with Staff's recommendation that Qwest not be allowed to charge CLECs for converting UNEs to non-UNE circuits, because Qwest benefits from these conversions, not the CLECs.

1 **Q. BEFORE WE GET INTO THE SUBSTANCE OF YOUR TESTIMONY,**
2 **PLEASE DESCRIBE HOW IT IS ORGANIZED.**

3 A. My testimony is divided into six sections. Following Section I's introduction and
4 summary, Section II focuses on the switched business line count data. This
5 section discusses the recommendations of Staff and provides a review of Qwest's
6 2004 line count data. Section III discusses Staff's recommendations with regard
7 to the process for making updates to the wire center "non-impaired" list. Section
8 IV discusses Staff's proposal regarding the blocking of CLEC orders in "non-
9 impaired" wire centers. Section V discusses Staff's recommendation regarding
10 the appropriate non-recurring charge ("NRC") for the transitioning of facilities
11 from unbundled network elements ("UNEs") to alternative arrangements such as
12 special access or private line circuits. Section VI concludes my testimony.

13 **Q. ARE THERE ANY EXHIBITS TO YOUR TESTIMONY?**

14 A. Yes. The exhibits are described below:

15 **HIGHLY CONFIDENTIAL EXHIBIT DD-9:** Qwest's supplemental response
16 to Joint CLEC Data Request 01-044, including highly confidential attachments A
17 through D. This data is used to develop the December 2004 switched business
18 lines counts.

19 **HIGHLY CONFIDENTIAL EXHIBIT DD-10:** This exhibit shows the
20 corrections to Qwest's December 2004 switched business line counts. This
21 exhibit is the same format as Exhibit DD-2, contained in my July 28, 2006
22 testimony, except that it uses December 2004 data rather than December 2003
23 data.

24

1 **II. SWITCHED BUSINESS LINE COUNTS**

2
3 **Q. PLEASE SUMMARIZE THE AREAS OF DISPUTE BETWEEN THE**
4 **JOINT CLECS AND QWEST REGARDING SWITCHED BUSINESS LINE**
5 **COUNTS AND STAFF'S POSITION ON THESE DISPUTES.**

6 A. There are four areas of dispute with regarding the proper methodology for
7 counting switched business line counts for the purposes of determining the “non-
8 impaired” classification of Qwest’s wire centers. The areas of dispute are: (1) the
9 proper vintage of the data – December 2003 or December 2004; (2) the proper
10 methodology of counting ARMIS data – adjusted counts versus unadjusted
11 counts; (3) whether residential lines should be included in the switched business
12 line counts; and (4) whether non-switched lines, including un-used capacity,
13 should be included in the switched business line counts. Staff recommends the
14 use of December 2004 line counts,² unadjusted ARMIS data,³ the inclusion of
15 residential lines as part of the CLEC line counts,⁴ and the inclusion of non-
16 switched lines as part of the CLEC line counts.⁵ Table 7 below summarizes each
17 party’s position with respect to these issues.

18

² *Fimbres Response*, page 5 lines 23 – 24.

³ *Id.*, page 6, lines 24 – 25.

⁴ *Id.*, page 7, lines 19 – 20.

Table 7: Summary of Positions on Line Count Issues

	Qwest	Joint CLECs	Staff
Vintage of Data	Dec-03	Dec-04	Dec-04
ARMIS Counts	Adjust to include un-used capacity	Unadjusted ARMIS counts	Unadjusted ARMIS counts
Residential Lines	Include in CLEC business line counts	Exclude from CLEC business line counts	Include in CLEC business line counts
Non-switched Lines	Include in CLEC business line counts	Exclude from CLEC business line counts	Include in CLEC business line counts

Q. DO THE JOINT CLEC'S AGREE WITH STAFF'S ANALYSIS OF THE SWITCHED BUSINESS LINE COUNT ISSUES?

A. The Joint CLECs certainly agree that December 2003 data should not be used as there is no "logical reason for using old data that has been superseded by more current data."⁶ The Joint CLECs also agree with Staff that the FCC did not intend for ARMIS data to be adjusted.⁷ Indeed, on this issue, the Utah Commission in its own pending wire center docket recently rejected Qwest's contention that it could adjust its ARMIS data to include the full capacity of its own high capacity retail loop circuits rather than actual lines in use. In reaching this conclusion, the Utah Commission wrote:

⁵ *Id.*

⁶ *Id.*, page 5, lines 19 – 20.

⁷ *Id.*, pages 6, line 19 through page 7, line 2.

1 Qwest's proposal to count the full capacity of its retail DS1 and DS3 circuits
2 rather than the known number of retail lines **actually in use** moves its process
3 farther away from that envisioned by the FCC and opens the counting process to
4 the potential for manipulation. (emphasis added)⁸
5

6 The Joint CLECs disagree with Staff regarding the methodology to count CLEC
7 line counts.⁹ The FCC rule specifically excludes non-switched lines from the
8 switched business line count calculations. Further, it does not make sense to
9 include residential lines in business line counts.

10 **Q. DO THE JOINT CLECS AGREE THAT CUSTOMERS SERVED VIA**
11 **ENHANCED EXTENDED LOOPS ("EELS") SHOULD BE COUNTED IN**
12 **THE SWITCHED BUSINESS LINE COUNTS?**

13 A. Yes. Staff indicates that the Joint CLECs disagree with Qwest regarding the
14 inclusion of EEL line counts.¹⁰ The Joint CLECs agree that switched business
15 lines when served via EELs should be counted in the switched business line
16 counts. EELs typically contain DS1 loops connected to either DS1 or DS3
17 transport. The CLECs have counted switched business capacity riding on DS1
18 loops, even when these loops are part of an EEL. The disagreement with regard
19 to high capacity loops involves whether non-switched capacity should be included

⁸ *Utah Order* at page 8. The Utah Order was issued on September 11, 2006 and can be found at
<http://www.psc.utah.gov/telecom/06orders/Sep/0604940RO.pdf>.

⁹ This issue was discussed in the July 28, 2006 testimony of Douglas Denney ("*Denney Testimony*"), pages
31 – 34.

¹⁰ *Fimbres Response*, page 7, lines 24 – 25.

1 in the line counts. The Joint CLECs position is that if 12 of the 24 channels on a
2 DS1 loop are used to provide switched services, such as dial tone, then the DS1
3 loop should count as 12 lines, not 24 lines. This is the same methodology used to
4 count voice channels for ARMIS reporting. The CLEC position is the same when
5 the DS1 loop is part of an EEL.

6 **Q. PLEASE SUMMARIZE THE SWITCHED BUSINESS LINE COUNTS**
7 **THAT RESULT FROM DECEMBER 2004 LINE COUNT DATA THAT**
8 **QWEST PROVIDED IN RESPONSE TO JCDR 01-044.**

9 A. Table 8 below contains a comparison of the December 2003 and December 2004
10 line count data. This line counts in this table are shown for the Qwest
11 Methodology, Staff Methodology and CLEC Methodology.¹¹ It should be noted
12 that both Staff and the Joint CLECs recommend the use of December 2004 data.
13 The December 2003 column applies the counting methodology recommended by
14 Staff and the Joint CLECs to the December 2003 data.

15

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¹¹ More detailed data is contained in Exhibit DD-2 for December 2003 data and Exhibit DD-10 for December 2004 data.

1 **Table 8: Line Counts based on December 2004 Data compared with**
2 **December 2003 Data**

3 **[*** BEGIN HIGHLY CONFIDENTIAL]**

5 **[END HIGHLY CONFIDENTIAL ***]**

6 Previously the Joint CLECs had disputed the status of six wire centers in Arizona
7 based on line counts. Based upon a review of the December 2004 line count data
8 the Joint CLECs are able to update the status of four of the six wire centers in
9 dispute. The Joint CLECs agree that under the FCC's rules Phoenix Main should
10 be classified as Tier 1 and "non-impaired" for DS3 loops as Phoenix Main has
11 greater than 38,000 switched business lines and at least four fiber-based
12 collocations. Mesa and Scottsdale Main should be classified as Tier 2 because
13 these wire centers have more than 24,000 switched business lines. The Joint
14 CLECs had previously classified McClintock as Tier 3, but based on the
15 December 2004 data this wire center can be classified as Tier 2. Note that Qwest
16 classifies this wire center as Tier 1. Two additional wire centers remain in dispute
17 based on line counts: Thunderbird and Tempe. Thunderbird does not have 38,000
18 lines or four fiber-based collocations and thus should not be classified as Tier 1,
19 but rather Tier 2. Tempe is properly classified as Tier 1, as it has at least four
20 fiber-based collocators, but since it has less than 38,000 lines it should not be
21 classified as "non-impaired" for DS3 loops.

Table 9 below, which is a copy of table 6 in the beginning of this testimony, summarizes each party's position with respect to each office on Qwest's wire center list.¹²

Table 9: (copy of Table 6) Summary of Joint CLEC's Investigation of Qwest's Wire Center List

Wire Center	CLLI(8)	Wire Center Designation		
		Qwest	Joint CLECs	Staff
PHOENIX EAST	PHNXAZE	Tier 1	Tier 2	?
PHOENIX MAIN	PHNXAZMA	Tier 1, DS3	Tier 1, DS3	Tier 1, DS3
PHOENIX NORTHEAST	PHNXAZNE	Tier 1	Tier 1	Tier 1
PHOENIX NORTH	PHNXAZNO	Tier 1, DS3	Tier 1, DS3	Tier 1, DS3
THUNDERBIRD	SCDLAZTH	Tier 1	Tier 2	Tier 1
TEMPE	TEMPAZMA	Tier 1, DS3	Tier 1	Tier 1, DS3
MCCLINTOCK	TEMPAZMC	Tier 1	Tier 2	Tier 2
MESA	MESAAZMA	Tier 2	Tier 2	Tier 2
SCOTTSDALE MAIN	SCDLAZMA	Tier 2	Tier 2	Tier 2
TUCSON MAIN	TCSNAZMA	Tier 2	Tier 2	Tier 2

Q. DO YOU HAVE ANY UPDATES TO TABLE 5 OF YOUR JULY 28, 2006 TESTIMONY SUMMARIZING COMMISSION DECISIONS IN OTHER STATES?

A. Yes, Table 10 below summarizes all of the state decisions of which I am aware. The row labeled CLEC position represents the position of the Joint CLECs in this docket. This table also shows the positions taken by the various RBOCs with regards to the issues discussed and the positions of state Commission staffs in the

¹² Note that Staff did not make specific recommendations with respect to wire centers. Staff's "recommendation" in Table 9 is derived from the Joint CLEC's interpretation of Staff's position on the issues and a review of the data supplied by Qwest.

1 various Qwest states where there are ongoing wire center proceedings. This table
2 corrects two typos in Table 5 from my July 28, 2006 testimony. First, the Ohio
3 June 6, 2006 decision relied upon December 2003 line count data, not December
4 2006. Second, the Colorado staff recommendation is to use December 2004 data,
5 not December 2006. On September 11, 2006 the Utah Commission issued an
6 order in its wire center case. I added this decision to the table. I also added the
7 recommendations of the Department of Commerce in the Minnesota wire center
8 case and Mr. Fimbres in this Arizona case.

9 As explained in my July 28, 2006 testimony, "N/A" indicates that the issue was
10 not discussed in the Commission's order. In these cases I believe it is correct to
11 assume that the RBOC's position was used as a default. An "X" indicates that the
12 issue has not yet been litigated in the state.¹³ The Washington decision, although
13 listed separately for Verizon and Qwest, is in fact, a single decision. The decision
14 is listed separately for each ILEC, however, because Verizon and Qwest took
15 slightly different positions on some of the issues.

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¹³ The California decision was part of an AT&T (previously SBC) arbitration regarding TRO/TRRO issues, but did not include an actual review of the AT&T line count data. As a result the proper vintage of the data has not yet been litigated.

1 **Table 10: Summary of State Commission Switched Business Line Count Decisions**

State	RBOC	Docket	Decision Date	Vintage of Data	ARMIS 43-08	Residential UNE Loops	Non-Switched UNE Loops	CLEC High Cap Loop Count
		CLEC Position		Dec-04	As Is	Exclude	Exclude	Used Capacity
		AT&T (SBC) Position		Dec-03	As Is	Include	Include	Full Capacity
CA	ATT	Application 05-07-024	27-Jan-06	X	As Is	Include	Include	Full Capacity
IL	ATT	Docket 05-0042	2-Nov-05	N/A	As Is	Include	Include	N/A
IN	ATT	Case No. 42857	11-Jan-06	N/A	As Is	Include	Include	N/A
KS	ATT	Docket 06-SWBT-743-Cor	2-Jun-06	N/A	N/A	Include	Include	Full Capacity
MI	ATT	Case No. U-14447	20-Sep-05	Dec-04	N/A	Exclude	N/A	N/A
OH	ATT	Case No. 05-887-TP-UNC	9-Nov-05	N/A	N/A	Include	Include	N/A
OH	ATT	Case No. 05-1393-TP-UNC	6-Jun-06	Dec-03	As Is	Include	Include	Full Capacity
TX	ATT	PUC Docket No. 31303	7-Apr-06	Dec-03	As Is	Include	Include	Full Capacity
		Bell South		Dec-04	Adjusted	Include	Include	Full Capacity
FL	BS	Docket No. 041289-TP	2-Mar-06	N/A	Adjusted	Include	Include	Full Capacity
GA	BS	Dockte No. 19341-U	2-Mar-06	N/A	Adjusted	Include	Include	Full Capacity
NC	BS	Docket No. P-55 SUB 1549	1-Mar-06	Dec-04	As Is	Exclude	N/A	Used Capacity
SC	BS	Docket No. 2004-316-C	10-Mar-06	N/A	Adjusted	Include	Include	Full Capacity
		Qwest Position		Dec-03	Adjusted	Include	Include	Full Capacity
WA	Q	Docket UT-053025	20-Apr-06	Dec-03	As Is	Include	Include	Full Capacity
UT	Q	Docket 06-049-040	11-Sep-06	Dec-03	As Is	Include	Include	Full Capacity
UT	Q	Docket 06-049-040	DPU Recommendation	X	As Is	Include	Include	Full Capacity
AZ	Q	Docket 06-0091	Staff Recommendation	Dec-04	As Is	Include	Include	Full Capacity
MN	Q	Docket 06-211	DOC Recommendation	*	As Is	Include	Include	Full Capacity
CO	Q	Docket 06M-080T	Staff Recommendation	Dec-04	As Is	Include	Exclude	Full Capacity
		Verizon Position		Dec-03	As Is	Include	Include	Full Capacity
NH	V	Order No. 24,598	10-Mar-06	N/A	N/A	N/A	N/A	N/A
WA	V	Docket UT-053025	20-Apr-06	Dec-03	As Is	Include	Include	Full Capacity

2 * MN DOC recommends that line count data be consistent with fiber-based collocation data.

3 **III. UPDATES TO QWEST'S WIRE CENTER LIST**

4

5 **Q. DO THE JOINT CLEC'S AGREE WITH STAFF'S RECOMMENDATION**

6 **REGARDING UPDATES TO THE WIRE CENTER LIST?**

7 **A.** The Joint CLECs agree with most of Staff's recommendations. Mr. Fimbres

8 recommends the following:

- 9 (1) Wire center updates based on line counts should only occur once a
- 10 year, but those based on fiber-based collocations can occur as fiber-
- 11 based collocations are added. Qwest should provide the same detailed

1 information supporting additional to the wire center list that it
2 provided in this case.¹⁴

3 (2) Parties would have 60 days to review Qwest's data. Updates will not
4 become effective by "operation of law."¹⁵

5 (3) A process to identify wire centers getting close to "non-impaired"
6 status is unnecessary.¹⁶

7 (4) CLECs should have 90 days to transition facilities. CLECs will
8 continue to pay UNE rates until facilities are transitioned.¹⁷

9 **Q. WHICH OF STAFF'S RECOMMENDATIONS DO THE JOINT CLECS**
10 **DISAGREE?**

11 A. The Joint CLECs disagree with Staff's recommendations labeled (3) and (4)
12 above. Mr. Fimbres concludes that a process to inform CLECs when a wire
13 center is close to "non-impaired" status is unnecessary. Mr. Fimbres reaches this
14 conclusion because, "Based on prior ARMIS and Fiber-Based Collocator
15 information, CLECs should be able to independently forecast where centers that

¹⁴ *Fimbres Response*, pages 13 – 14.

¹⁵ *Id.*, page 14, lines 20 – 21.

¹⁶ *Id.*, page 13, lines 17 – 19.

¹⁷ *Id.*, page 15, lines 1 – 5. Mr. Fimbres did not directly state that CLECs will continue to pay UNE rates during the transition period, but this is implied by his statement on line 4 of this page that back billing is not an issue under Staff's proposal.

1 have the potential to be reclassified as Non-Impaired.”¹⁸ However, this is not
2 quite the case. Because the data in this case regarding line counts and fiber-based
3 collocators, including the number of fiber-based collocators in each office, is
4 considered proprietary, this data can not practically be used to forecast future
5 additions to the “non-impaired” wire center list. While certainly much of the data
6 exists and estimates can be made, the proprietary nature of the data prohibits those
7 who have access to this data from using this data in any way not directly related to
8 this case. In other words, I am prohibited from using this data to inform those at
9 Eschelon involved in business planning regarding wire centers that may be close
10 to “non-impaired” status. The only information that I can rely upon is public
11 information. The public information available is limited. For example, we can
12 surmise that any Arizona wire center that is not on the non-impaired list has less
13 than three fiber-based collocators and less than 24,000 lines. However, this does
14 not tell us how many fiber-based collocations or lines. We know that wire centers
15 were DS3 loops are “non-impaired” have four or more fiber-based collocators and
16 greater than 38,000 lines, but this does not tell us how close these wire centers are
17 to the 60,000 line threshold for DS1 loop “non-impairment.” A process, as
18 recommended in my direct testimony, in which Qwest informs CLECs of wire
19 centers within 1 fiber-based collocator or 5,000 business lines of a threshold is the
20 only practical way for CLECs to make informed business plans and to continue to
21 remain competitive in the market. Providing this information to CLECs should

¹⁸ *Id.*, page 13, lines 18 – 20.

1 not be a burden on Qwest as it is already counting lines and fiber-based
2 collocations on a regular basis in order to determine whether any new wire centers
3 reach "non-impaired" status.

4 The Joint CLECs also disagree with the 90 day transition period. This time
5 period is too short to investigate the availability of and make alternative
6 arrangements. As discussed in my direct testimony the FCC recognized this and
7 granted CLECs a one-year transition.¹⁹ The Joint CLECs propose a one-year
8 transition as ordered in the TRRO.

9 **IV. BLOCKING CLEC ORDERS**

10
11 **Q. PLEASE SUMMARIZE STAFF'S POSITION WITH REGARDING TO**
12 **BLOCKING OF CLEC ORDERS IN "NON-IMPAIRED" WIRE**
13 **CENTERS.**

14 **A.** Staff recognizes the potential competitive impacts if Qwest improperly blocks
15 CLEC orders. Staff recommends that "the process for blocking orders be
16 determined with sufficient advance notice, such as 90 days following the
17 communication by Qwest to Staff and the Joint CLECs of a process for blocking

¹⁹ See my July 28, 2006 testimony, pages 45 – 47.

1 orders.”²⁰ Staff further recommends that “Qwest should be required to file the
2 processes as a compliance item in this docket.”²¹

3 The Joint CLECs fully support Staff’s recommendations, but do not believe
4 Qwest has the legal right to block CLEC orders without CLEC consent.

5 As stated in my July 28, 2006 testimony, the FCC has clearly stated that ILECs
6 “must immediately process” orders for UNEs from a CLEC who certifies that it
7 has undertaken a “reasonably diligent inquiry, and, based on that inquiry, self-
8 certify that, to the best of its knowledge,” it is entitled to obtain the UNE.²²

9 Because Qwest’s system change would block a CLEC’s UNE order regardless of
10 whether the CLEC had self-certified, even if the wire center is on a Commission
11 approved list, Qwest’s actions would violate the FCC’s Order. The Utah
12 Commission came to the same conclusion in its wire center decision:

13 Having reviewed the parties’ arguments and relevant portions of the
14 *TRRO*, we conclude the process set forth by the FCC in paragraph 234 of
15 the *TRRO* remains applicable to CLEC requests for UNEs and order
16 Qwest and CLECs to follow that process in the procurement of UNEs in
17 the future. Specifically, a CLEC must undertake a reasonable inquiry and
18 self certify, based on that inquiry, that, to the best of its knowledge, it is
19 entitled to unbundled access to particular network elements at a given wire
20 center. Qwest must then immediately process the CLEC’s request for
21 those elements and may subsequently challenge the CLEC’s claim of

²⁰ *Fimbres Response*, page 16, lines 10 – 13.

²¹ *Id.*, page 16, lines 15 – 16.

²² *TRRO* at ¶ 234.

1 entitlement to those elements through the dispute resolution procedures
2 provided in its interconnection agreements.²³
3

4 The Joint CLECs previously indicated that they were willing to agree to a process
5 under which Qwest could reject orders provided that: 1) the rejection of orders is
6 limited to facilities designated as non-impaired after party review of the
7 underlying data and consistent with the Commission-approved process established
8 in this proceeding; and 2) the terms, procedures and details for the rejection of
9 such orders are known in advance and mutually agreed upon.

10 The Joint CLECs, Staff and apparently Qwest agree upon the first condition,
11 however the second condition is less clear. Qwest apparently does not believe
12 CLEC input or participation is necessary, and requests the ability to block orders
13 on terms determined by Qwest alone. The Joint CLECs strongly support Staff's
14 recommendation that Qwest file the process for blocking orders with this
15 Commission as part of the compliance filing in this docket. The Joint CLECs also
16 request that the Commission order Qwest to work with CLECs in developing and
17 testing this process to ensure that any such process operates as it is intended.

18

²³ See Utah Order at pages 37 – 38.

1 **V. NON-RECURRING CHARGES**

2

3 **Q. PLEASE SUMMARIZE STAFF'S POSITION WITH REGARD TO THE**
4 **PROPER NON-RECURRING CHARGE FOR THE CONVERSION FROM**
5 **UNES TO NON-UNE CIRCUITS.**

6 A. Staff recommends that Qwest should waive all conversion charges for converting
7 UNE to private lines services.²⁴ The CLECs agree with this approach as these
8 conversions are for the benefit of Qwest, not CLECs. However, Staff does note
9 that it believes that accurate record-keeping will require the change of some
10 circuit identified information because "a UNE circuit may not be easily
11 distinguishable from a private line circuit or its equivalent and may result in
12 improper billing."²⁵ As described in my July 28, 2006 testimony, the Joint
13 CLECs disagree that a change in the circuit ID is necessary.²⁶ Further, whether or
14 not the circuit ID actually changes is not actually the issue in this case.²⁷ The
15 focus of the issue raised in this case is whether a conversion charge is appropriate.
16 If the Commission plans on determining whether or not actual changes in the

²⁴ *Fimbres Response*, page 20, lines 10 – 12.

²⁵ *Id.*, page 19, lines 11 – 15.

²⁶ See *Denney Testimony*, July 28, 2006, pages 54 – 65.

²⁷ See *Qwest Corporation's Comments in Response to Commission Order Opening Docket and Allowing a Response*, Docket 06M-080T (filed March 1, 2006). Qwest asked this Commission to focus on the "narrow issues" outlined in its filing (see page 2). These issues including the wire center list, the proper NRC, and the process for making updates to the list (see page 10).

1 circuit ID are appropriate, the Joint CLECs request the ability to directly address
2 this issue through further testimony.

3 **VI. CONCLUSION**

4
5 **Q. WHAT ARE YOUR RECOMMENDATIONS TO THE ARIZONA**
6 **COMMISSION?**

7 **A.** I have the following recommendations for this Commission:

8 (1) The Joint CLECs' recommendations regarding the "non-impaired" status of
9 Qwest's wire centers as identified in Table 6 should be adopted. This
10 Commission should rely upon the December 2004 data in determining the
11 number of switched business lines in each wire center.

12 (2) Future additions to the wire center "non-impaired" list should require
13 Commission approval. Qwest should make available to the Commission and
14 CLECs the underlying data used by Qwest to determine that additional wire
15 centers meet the FCC's "non-impaired" status. Qwest should not be allowed
16 to unilaterally impose its view of what is "non-impaired." Further, Qwest
17 should provide, on an on-going basis, a list of wire centers close to meeting
18 the FCC's "non-impairment" criteria.

19 (3) Qwest should not be allowed to block CLEC orders without the agreement and
20 participation of CLECs in the process and necessary systems changes. The

1 Joint CLECs agree with Staff that such a process for blocking orders should
2 be filed with this Commission as part of a compliance filing in this docket.

3 (4) Qwest should not be allowed to charge CLECs for Qwest to perform tasks that
4 Qwest is performing for its own benefit.

5 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

6 **A. Yes.**

EXHIBIT

DD-9

(REDACTED)

EXHIBIT

DD-10

(REDACTED)